IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2965 OF 2007

Rupee Cooperative Bank Ltd. ...Petitioner
V/s.
C & M Farming Limited & Ors. ...Respondents

Mr.K.V. Tambe for the Petitioner.
S.S. Surve i/b. M/s.Little & Co. for the Respondent Nos.1 and 4.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.

DATED : NOVEMBER 28, 2007

P.C. :-

. Rule. Rule made returnable forthwith. By consent of parties, petition is taken up for final hearing

2. By this petition, the petitioner - Bank challenges the order dated 22nd December, 2006 passed by the Debts Recovery Appellate Tribunal in Appeal No.493/2006. In that appeal, the respondent herein - C & M Farming Limited had challenged the order dated 18th December, 2006 passed by the Presiding Officer in-charge DRT-III, Mumbai, rejecting the application filed by the respondent for interim relief. The Appellate Court by

the order impugned in this petition has set aside the order dated 18th December, 2006 and has allowed the application filed for interim relief by the respondent.

3. The learned Counsel appearing for the appellant points out that the order of the learned Appellate Court is in terms contrary to the provisions of Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. He points out that no appeal can be entertained by the Appellate Court because of the provisions of Section 18 of the Act, without the appellant depositing atleast 50% of the amount. The amount of deposit can be reduced by the Appellate Court for reasons to be recorded. The learned Counsel points out that in the impugned order, there are no reasons recorded in entertaining the appeal without any deposit being made.

4. We have also heard the learned Counsel for the respondents. In our opinion, the learned Appellate Court was not justified in entertaining and allowing the appeal without applying his mind to the requirements of

Section 18 of the Act. He was under duty to apply his mind to those provisions. Because the order has been made without applying mind to the relevant provisions, the order suffers from infirmity and therefore, is liable to be set aside. In the result, in our opinion, the following order would meet the ends of justice :-

1) Order dated 22nd December, 2006 impugned in the petition is set aside,

2) Appeal No.493/2006 is remitted to the Debts Recovery Appellate Tribunal for consideration, hearing and decision in accordance with law.

5. Rule is made absolute accordingly. No order as to costs.

(D.K. DESHMUKH, J.)

(V.M. KANADE, J.)